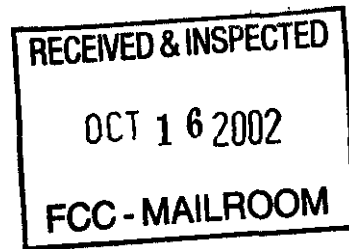


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)

Application of)
HERBERT L. SCHOENBOHM)
for a Station License)
in the Amateur Radio Service)

and)

Application of)
HERBERT L. SCHOENBOHM)
for a General Class Operator License)
in the Amateur Radio Service)

WT DOCKETNO. 01-352

FILE NO. 0000418274

Appearances

Herbert L. Schoenbohm, pro se; and James W. Shook, Esq., and Dana E. Leavitt, Esq., on
behalf of the Chief, Enforcement Bureau, Federal Communications Commission.

INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE ARTHUR I. STEINBERG

Adopted October 9, 2002

Released October 11, 2002

I. PRELIMINARY STATEMENT

1. By *Hearing Designation Order*, 17 FCC Rcd 1369 (2002) ("*HDO*"), the Commission designated for hearing the applications of Herbert L. Schoenbohm for a Station License and for a General Class Operator License in the Amateur Radio Service. The following issues were specified

- (a) To determine whether Herbert Schoenbohm possesses the requisite character qualifications to be a Commission licensee.
- (b) To determine in light of the evidence adduced under issue (a), whether the captioned applications should be granted.

(*HDO* at para. 7.) Pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended, the *HDO* assigned to **Mr.** Schoenbohm the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues. (*Id.* at paras. 6, 10.)

2. A prehearing conference was held on February 21, 2002. The hearing was held in **Washington, D. C.**, on May 7, 2002. The record was closed at the conclusion of the hearing. (Tr. 189; *Order*, FCC 02M-36, released May 10, 2002.) Proposed findings of fact and conclusions of law ("PFCs") were filed by the Enforcement Bureau ("Bureau") on July 9, 2002, and by

Mr. Schoenbohm on July 12, 2002.¹ Reply findings were filed by Mr. Schoenbohm on August 14, 2002.

II. FINDINGS OF FACT

A. Background

3. Mr. Schoenbohm was born in 1939, the son of a Lutheran minister. Amateur radio has played a major role in Mr. Schoenbohm's life. He first obtained a ham license at the age of 14 and, with his father the founder of the Courage Center in Minnesota, participated in a program to assist handicapped persons to become hams. As a licensed amateur radio operator, Mr. Schoenbohm received many commendations for utilizing amateur radio during emergencies including being named by the governor of the Virgin Islands as a "Hero of Hurricane Hugo" for keeping vital communications lines open in the aftermath of the most devastating storm ever to hit St. Croix. (Schoenbohm Ex. 1.)

4. In December 1992, Mr. Schoenbohm was convicted for fraudulently using a counterfeit access device to obtain long distance telephone service in violation of 18 U.S.C. § 1029(a)(1). (Bureau Official Notice Ex. 1, pp. 2-3.) Mr. Schoenbohm was sentenced to house arrest for two months, given two years probation, and ordered to pay a fine of \$5,000. Mr. Schoenbohm began serving his sentence on January 11, 1993. On appeal, the U. S. Court of Appeals for the Third Circuit affirmed Mr. Schoenbohm's conviction. Mr. Schoenbohm's petition for rehearing was denied. (*Supplemental Initial Decision & Administrative Law Judge Edward Luton*, 13 FCC Rcd 1853, 1854-55 (1997); official notice taken.)

5. In 1994, Mr. Schoenbohm filed applications to renew his Amateur Radio Service station license for KV4FZ and for his Amateur Radio Service operator license. In 1995, the Wireless Telecommunications Bureau, under delegated authority, designed Mr. Schoenbohm's applications for hearing. (*Amended Hearing Designation* Order, 10 FCC Rcd 1669 (WTB 1995); official notice taken.)

6. Following two separate hearings, the Commission, in July 1998, determined that Mr. Schoenbohm had engaged in misrepresentation and was not fully candid in describing his conviction. The Commission found that Mr. Schoenbohm had testified deceptively about his conviction both in 1995 and again in 1997. (Bureau Official Notice Ex. 1, pp. 6-7, 11; Tr. 39-40.) In addition, the Commission found that Mr. Schoenbohm had testified deceptively in 1997 about an amateur radio transmission he made in 1995, during which Mr. Schoenbohm solicited others to make *ex parte* presentations to the Commission on his behalf. (Bureau Official Notice Ex. 1, pp. 9-11.) Consequently, the Commission denied Mr. Schoenbohm's applications. However, in accordance with its usual policy, the Commission authorized Mr. Schoenbohm to continue to operate his amateur station until the 91st day following the release date of judicial review of its decision. (*Id.* at 12.)

7. After exhausting all of his rights to appeal the Commission's determination, Mr. Schoenbohm ceased operating amateur station KV4FZ in late January 2001. He submitted the

¹ Mr. Schoenbohm e-mailed copies of his PFCs to counsel for the Bureau and to the Presiding Judge on July 8, 2002.

² *Herbert L. Schoenbohm*, 13 FCC Rcd 15028 (1998), *recon. den.*, 13 FCC Rcd 23774 (1998), *aff'd*, 204 F.3d 243 (D.C. Cir. 2000), *rehearing en banc denied* (May 2, 2000), *as amended* (June 28, 2000), *cert. denied*, 531 U.S. 968 (2000). (Official notice taken.)

applications currently under consideration on March 31, 2001. (Tr. 39-42.) In conjunction with his applications, Mr. Schoenbohm, on April 14, 2001, took and passed an examination for an extra class amateur license administered by the American Radio Relay League. (Schoenbohm Ex. 31.)

B. Character Generally

8. Prior to his conviction in December 1992, Mr. Schoenbohm had never been convicted of any felony or serious crime. Subsequent to his conviction, **Mr.** Schoenbohm has not been convicted of anything. (Schoenbohm Ex. 1.) Before the Commission denied his renewal applications in 1998, Mr. Schoenbohm had held an amateur license for over 40 years. (Schoenbohm Ex. 14.) He also holds a general radiotelephone operator license. (Schoenbohm Ex. 43.)

9. As for his testimony at **the** prior proceeding, Mr. Schoenbohm explained that he “was in a state of denial, believing that [he] had been wrongfully convicted of a crime that [he] did not commit.” (Schoenbohm Ex. 1; Tr. 44.) Notwithstanding his personal opinion of the events surrounding his conviction, Mr. Schoenbohm now “realize[s] that [**he**] was found guilty and that, in the eyes of society, [he] is a felon.” (*Id.*) Addressing the fact that his written testimony in this proceeding omitted any reference to the Commission’s findings that he misrepresented facts and lacked candor in his 1995 and 1997 testimony regarding his felony conviction and *ex parte* communication solicitation, **Mr.** Schoenbohm explained that he did not think he had to address the Commission’s findings from the prior proceeding. (Tr. 44.)

10. Mr. Schoenbohm understood that the purpose of the instant hearing is to determine whether he “has been sufficiently rehabilitated that the Commission could be confident that he could be relied upon to . . . deal with the Commission in an honest and forthright manner.” (HDO at para. 2; Tr. 43.) In support of his claim that he now possesses the requisite character qualifications, **Mr.** Schoenbohm stated that he “has worked hard to rehabilitate [him]self and to overcome the effects of [his] conviction,” and “to demonstrate that [he is] capable of obeying the law and, in particular, the FCC’s rules and regulations.” (Schoenbohm Ex. 1.) In this regard, Mr. Schoenbohm testified that for about **the** past eight years, he has “held a responsible position with the Virgin Islands government, in charge of expenditures and supervision of large amount[s] of money and property. During that time, nobody has accused [him] of any dishonesty, connected with [his] work.” (Schoenbohm Ex. 1; *see also* Schoenbohm Ex. 45.)

11. In this regard, Mr. Schoenbohm has worked in various capacities in **the** Virgin Islands Department of Property and Procurement. (Tr. 47; Schoenbohm Exs. 4, 13, 30, 41, 45, **56.**) Among other positions, **Mr.** Schoenbohm has been **the** site coordinator for the Recovery Hill repeater site. (Tr. 48; Schoenbohm Ex. 13.) In that role, he “issued a plan of attack to get all the illegal, unlicensed, not properly licensed or wrong location squatters that had moved in over the past ten years and were using the facility.” (Tr. 48.) More recently, Marc A. Biggs, Commissioner of the Department of Property and Procurement, designated Mr. Schoenbohm an “Essential Employee” of that Department, effective August 21, 2001. (Schoenbohm Ex. 41.)

12. In his capacity as *an* employee of **the** Virgin Islands Department of Property and Procurement, Mr. Schoenbohm serves on a committee that evaluates all government radio

³ It is noted ~~that~~, in designating this case for hearing, the Commission stated that the facts leading to Mr. Schoenbohm’s disqualification **are** *res judicata* and that they are not to be revisited in this proceeding. (HDO at para. 2.)

purchases. (Tr. 47.) The chief legal counsel for the Department appointed **Mr. Schoenbohm** as the “radio site inspector” to investigate whether certain other Virgin Islands government agencies were purchasing and using improperly licensed radios by skirting the competitive bidding process. (Tr. 47-48.) **Mr. Schoenbohm** has also written a letter to an individual in the Commission’s Enforcement Bureau regarding this matter, and has communicated “with [Commission] field personnel in Puerto Rico . . . , cooperating with [them] in trying to get information, invoices, serial numbers, [and] locations of radios,” in **this** on-going investigation. (Tr. 48.)

13. With regard to his reputation in the community, **Mr. Schoenbohm** is an elected and non-elected official of **the** Republican Party of the United States Virgin Islands, and was recently named to the position of interim State Chairman. (Tr. 52; Schoenbohm Ex. 3.) **Mr. Schoenbohm** also continues to do volunteer work although, due his advancing age, it is not to the same extent as it was before he lost his licenses. (Tr. 52-53.)

14. The only other witness who appeared at the hearing was Frank A. Todd, IV, of Port Vue, Pennsylvania, who testified as to **Mr. Schoenbohm**’s reputation in the amateur radio community. (Tr. 129-45; Schoenbohm Ex. 22.) **Mr. Todd**, who was recovering from a car accident, traveled 236 miles to appear at the hearing. (Tr. 131.) **Mr. Todd** has known **Mr. Schoenbohm** since approximately 1995, when, at the age of 13, **Mr. Todd** became interested in amateur radio and used to monitor **Mr. Schoenbohm**’s transmissions. (Tr. 140-41; Schoenbohm Ex. 22.) During his years of listening to **Mr. Schoenbohm**, **Mr. Todd** found **Mr. Schoenbohm**’s deportment to be “exemplary.” (Schoenbohm Ex. 22.) **Mr. Todd** considered **Mr. Schoenbohm** “to be a positive role model in amateur radio and **an** individual that is capable of making a very significant contribution to the Amateur Radio Service.” (*Id.*) In fact, **Mr. Schoenbohm** was “one of a very few amateur radio operators who provided **the** prime inspiration and motivation that led [**Mr. Todd**] to obtain [**his** amateur] license.” (*Id.*)

15. **Mr. Todd** did not meet **Mr. Schoenbohm** in person until 1999, after **Mr. Todd** graduated high school. (Tr. 141.) Although **Mr. Todd** did not have an amateur license at that time, he traveled to the Virgin Islands to meet **Mr. Schoenbohm**, and he stayed with **Mr. Schoenbohm** and his family for a week. (*Id.*; Schoenbohm Ex. 22.) **Mr. Todd** believed **Mr. Schoenbohm** to be a “decent, honest and hard-working person” and hoped the Commission would allow **Mr. Schoenbohm** “to prove himself and enjoy his later years through a wonderful activity like amateur radio.” (Schoenbohm Ex. 22.)

16. **Mr. Todd** was familiar with the reasons underlying the Commission’s 1998 decision not to grant **Mr. Schoenbohm**’s renewal applications. (Tr. 133.) Specifically, **Mr. Todd** was aware **of Mr. Schoenbohm**’s lack of candor in certain testimony he gave to the Commission in a prior hearing. (Tr. 133, 136-37.) However, this knowledge did not change **Mr. Todd**’s opinion as to **Mr. Schoenbohm**’s qualifications because **Mr. Todd** believed that **Mr. Schoenbohm** has been truthful to him, and everyone **Mr. Todd** talked to spoke highly of, and relied upon, **Mr. Schoenbohm**. (Tr. 137, 140.) **Mr. Todd** **further** stated that “[r]egardless of whatever **Mr. Schoenbohm** may have done, he has certainly had time to **make** the adjustments in his life necessary to requalify himself as a candidate for an Amateur Radio License.” (Schoenbohm Ex. 22.)

C. Hurricane Lenny

17. When Hurricane Lenny hit the Virgin Islands in 1999, the power **supply** for station WSTX(AM) was interrupted and the station’s tower had fallen to the ground. (Tr. 60-62.) **The**

Virgin Islands Emergency Management Agency directed Mr. Schoenbohm to install an antenna to ensure that station **WSTX** was able to operate “so the public could be informed by FEMA and by the local government agencies on relief supplies.” (Tr. 61.) It was considered vital to put that station back on the air because WSTX was the primary AM station that people listened to during emergencies. (Tr. 61, 64.) Mr. Schoenbohm restored the station’s antenna and tuned the transmitter so that the station could continue operating. (Tr. 51, 53-54, 60-63.) Mr. Schoenbohm also advised the owner of station WSTX that he would need a competent consulting engineer in order to put **the** station in the proper mode, and that he (the owner) would have to notify the Commission **of** the station’s circumstances and **file** the necessary papers as soon as practicable. (Tr. 58, 64-65.)

18. Mr. Schoenbohm was commended for his work during Hurricane Lenny. Specifically, Mr. Biggs wrote to **Mr.** Schoenbohm as follows:

Once again, I write to *thank* you for all of your **time** and effort in assisting **the** government during the passing of Hurricane Lenny. Again, you gave unselfishly of your time to ensure that **the** needs of the government and your community were fulfilled. Your deeds did not go unnoticed. Many accolades and praise were heaped on our Department [of Property and Procurement] due to your diligence, commitment, and hard work. We pulled through with flying colors thanks to you.

Please know that your efforts were noticed, and I am privileged to work with you. **On** behalf of the Government of the **Virgin** Islands, thank you for a job well done.

(Schoenbohm Ex. 4.)

D. Contest

19. In October 2001, subsequent to the cancellation **of** his licenses, Mr. Schoenbohm served as a host for a participant in an international radio competition. (Schoenbohm Ex. 1; Bureau Ex. 2; Tr. 81.) The purpose of the competition was to have contestants make contact with other amateur stations around the world. Essentially, the message sent and received involved each station identifying itself and transmitting a message consisting of a signal report and a numeral identifying in which of 40 “zones” the station was located. The contestant who had the highest score would win. (Tr. 83-84, 89, 102.)

20. Some months earlier, Mr. Schoenbohm had placed a notice on the Internet advising that his home would be available to amateur radio operators who wished to participate in the contest. Steven S. Reichlyn, amateur radio licensee of station AA4V, accepted Mr. Schoenbohm’s offer. Specifically, **Mr.** Reichlyn and a friend arranged to rent Mr. Schoenbohm’s facilities, to include his home and radio equipment (a transmitter, amplifier, and a switch for some antennas), during the course of **the** contest. At the last minute, Mr. Reichlyn’s friend cancelled due to a death in his family. Mr. Reichlyn arrived at Mr. Schoenbohm’s home on October 25, 2001, two days before the start of the contest, and did not leave Mr. Schoenbohm’s premises until October 29, 2001, after the contest had ended. (Tr. 88-90; Bureau Ex. 2, **pp.** 1-2.)

21. The contest began on Saturday, October 27, 2001, at 00:00 Greenwich Mean Time (“GMT”) and lasted 48 hours. (Tr. 96; Bureau Ex. 3.) Mr. Reichlyn operated from inside of Mr. Schoenbohm’s house, **a** single-level dwelling that **is** “basically a **very** open area that is separated

only by . . . windows [that] are all louvered.” (Tr. 90.) **Mr. Reichlyn** became fatigued and stopped transmitting at 0627 GMT, October 27th. He asked **Mr. Schoenbohm** if he would like to operate the microphone; **Mr. Schoenbohm** had an expertise at operating on low frequencies. (Tr. 100-01, 109; Bureau Ex. 2, pp. 2-3.) Because **Mr. Reichlyn** had entered a two-man contest, he could have another person assist him. (Tr. 97; 109.) **Mr. Schoenbohm** reluctantly accepted and began operating the equipment under **Mr. Reichlyn**’s call sign from 0627 to 0758 GMT. (Tr. 98, 116-17; Bureau Ex. 2, p. 3.) **Mr. Schoenbohm** contacted multiple operators during that period, including contacts in St. Martin, Scotland, Canary Islands, Mexico, New Zealand, Costa Rica, Ireland, Cuba, Antigua, and Aruba. (Tr. 105-06, 112-14, 116; Bureau Ex. 3, pp. 3-6.) Although **Mr. Reichlyn** did not stay in the equipment room with **Mr. Schoenbohm** at all times, **Mr. Schoenbohm** believed that he was supervised by **Mr. Reichlyn** during this period because **Mr. Reichlyn** remained on the premises, stayed within earshot of **Mr. Schoenbohm**’s transmissions, and observed his operations. (Tr. 110-11.)

22. **Mr. Reichlyn** resumed operating the microphone at 0758 GMT and did not ask **Mr. Schoenbohm** to take over for him again until the following day. (Bureau Ex. 2, p. 3; Tr. 117.) **Mr. Schoenbohm** thereupon operated the equipment from 0834 to 0903 GMT, October 28th. (Tr. 101, 117-18; Bureau Ex. 2, p. 3.) During this second turn at the microphone, **Mr. Schoenbohm** again contacted multiple operators, including operators located in Guam or Hawaii, Wallis and Futuna Islands, New Zealand, Brazil, Puerto Rico, Argentina, and Grenada. (Tr. 118-19; Bureau Ex. 3, p. 7.) During this second time period, **Mr. Reichlyn** “did not leave the premises” and was “always in a position to exercise the necessary controls [over **Mr. Schoenbohm**] to comply with the [Commission’s] rules and regulations.” (Tr. 126-28.) **Mr. Schoenbohm**’s “premises” consisted of the “ham shack” and a very small yard. **Mr. Reichlyn** “was always within . . . earshot of the operating facility,” and “was always in a position to control the . . . periods of time that [**Mr. Schoenbohm**] was operating.” (Tr. 128.)

23. **Mr. Schoenbohm** was aware that Section 97.115 of the Commission’s Rules prohibits certain communications involving a “third party.” (Tr. 106-07.)⁴ **Mr. Schoenbohm** did not believe that he violated Section 97.115 when he operated radio equipment under **Mr. Reichlyn**’s call sign and supervision. (**Schoenbohm** Ex. 1; Tr. 106, 108-09.) As **Mr. Schoenbohm** understood that rule, he would be prohibited, as an unlicensed operator, “from passing messages to third parties.” However, the rules would not prohibit him “from being a voice behind the microphone to establish the communication” with another operator. (Tr. 106; 108.) **Mr. Schoenbohm** also understood that, so long as a licensed operator supervised the transmission, an unlicensed operator such as **Mr. Schoenbohm** could “speak into [the] microphone.” (Tr. 108.)

E. Effect of the Loss of Licenses

24. **Mr. Schoenbohm** acknowledged that “misrepresentation . . . is considered to be a cardinal sin at the Commission” (Tr. 176), and he viewed the Commission’s denial of an application for renewal as “a death penalty” (Tr. 175). Although **Mr. Schoenbohm** disavowed any deliberate intent to deceive the trier of fact during his earlier Commission hearings, he specifically acknowledged that the mistakes he made in his prior testimony “were egregious mistakes, fatal mistakes.” (Tr. 180.) **Mr. Schoenbohm** believed that being denied use of an amateur station for 15 months has been an adequate sanction. (Tr. 176.) As he described it:

⁴ Section 97.3(46) of the Rules defines “third party communications” as “[a] message from the control operator (first party) of an amateur station to another amateur station control operator (second party) on behalf of another person (third party).” (Official notice taken.)

If you have been off the air for a year in ham radio you have shamed yourself, like a Japanese industrialist would, before the entire amateur community. It is a very serious punishment when you are ... a very high-profiled [sic] individual, involved a lot in contests and international operations, regarded as a person who has won contests and achieved world records, all of a sudden he is banished. That is a much more serious deterrent than a taxicab licensee losing his communication system for one year because it is a personal shame that is attached to it.

And it is very hard for me to explain that to you because only I know it. **You** saw Frank Todd come here. I let him down. I let the community down and the Virgin Islands down where I cannot perform the services they have relied on in the past because I can't even talk to the National Weather Service when a hurricane passes over, which **I** have done for years. And **I** have **to** explain to them every time **I** don't have a license anymore [sic].

And that is a far greater deterrent from making the mistake again ~~than~~ just the time element involved, the mere fact that **I** lost the license[s]. It is a significant deterrent from screwing up ever again in the future.

(Tr. 176-77.)

III. CONCLUSIONS OF LAW

25. This proceeding was designated **for** hearing to determine whether Herbert L. Schoenbohm possesses the requisite character qualifications to be a Commission licensee, and whether his applications for a Station License and for a General Class Operator License in the Amateur Radio Service should be granted. *HDO* at para. 7. **Mr.** Schoenbohm's character had been implicated by a felony conviction in 1992, and by his subsequent misrepresentation and lack of candor before the Commission in hearings held in 1995 and 1997. *Id.* at para. 5. As a result of the misrepresentation and lack of candor, Mr. Schoenbohm's applications **for** renewal of his then outstanding licenses were denied by the Commission. *Id.* at para. 4.

26. The primary question to be addressed here is whether **Mr.** Schoenbohm "has **been** sufficiently rehabilitated that the Commission could be confident that he could be relied upon to observe [the Commission's] rules and policies and deal with the Commission in an honest and forthright manner." *HDO* at para. 2. Citing *Modified Character Policy Statement*, 5 FCC Rcd 3252 (1990) (subsequent history omitted), the Commission stated in the *HDO*

Rehabilitation is generally a factor when misconduct occurred prior to the filing of the application in question. Whether an applicant has been rehabilitated will necessarily turn on the facts of each case. Among other factors, the Commission will consider: (1) whether the applicant has not been involved in any significant wrongdoing since the alleged misconduct occurred; (2) how much time has elapsed since the misconduct; (3) the applicant's reputation for good character in the community; and (4) meaningful measures taken by the applicant **to** prevent the future occurrence of the misconduct. Further, ... when, as here, previous Commission consideration **of** the misconduct resulted in the denial of an application, the deterrent impact of [the

Commission's] previous action may provide a basis for concluding that a recurrence of misconduct is unlikely.

HDO at para. 5. Each of these factors will be considered below.

27. Behavior subsequent to the prior misconduct. The findings establish that **Mr.** Schoenbohm has not engaged in any criminal misconduct since his 1992 conviction for fraud. In addition, for about the past eight years **Mr.** Schoenbohm has held a responsible position with the government of the Virgin Islands. In this position, **Mr.** Schoenbohm has been in charge of expenditures and supervision of large amounts of money and property. During this time, nobody has accused Mr. Schoenbohm of any dishonesty in connection with his work. It **is**, therefore, concluded that Mr. Schoenbohm has not been involved in any significant wrongdoing since the occurrence of the misconduct for which he lost his licenses.

28. In its PFCs, the Bureau contends that **Mr.** Schoenbohm's operation of **Mr.** Reichlyn's station during the October 2001 amateur contest violated Section 301 of the Communications Act and Sections 97.5 and 97.7 of the Commission's Rules because Mr. Schoenbohm did not have a license to transmit and was not otherwise authorized to operate the station. Bureau PFCs at 15-16. Thus, the Bureau argues that **Mr.** Schoenbohm had physical control of the station and that, "even though **Mr.** Reichlyn was present or nearby and able to supervise Mr. Schoenbohm, . . . Mr. Schoenbohm operated **the** station and made transmissions while at the microphone." *Id.* at 16.

29. This matter is without decisional consequence. As noted above, in designating this case for hearing, the Commission stated that one of the factors to be considered under rehabilitation was the applicant's involvement in any "*significant* wrongdoing." *HDO* at para. 5 (italics added). Even assuming, *arguendo*, that the conduct cited by the Bureau was ultimately found to be in violation of the Act and rules, it would not be considered of sufficient magnitude to disqualify Mr. Schoenbohm from becoming a Commission licensee, or to warrant the denial of his applications. In this regard, it is clear that the Bureau itself did not consider the alleged violations to be determinative or disqualifying since it concluded in its PFCs that **Mr.** Schoenbohm "possesses the requisite character [qualifications] to be a Commission licensee," and it recommended that his applications be granted. Bureau PFCs at 18-19. Under these circumstances, Mr. Schoenbohm's actions during the 2001 amateur contest do not evince any "significant wrongdoing" on his part.

30. Time since the misconduct. The evidence establishes that nearly 10 years have elapsed since Mr. Schoenbohm's fraud conviction. Additionally, the evidence shows that Mr. Schoenbohm testified deceptively in Commission proceedings held in 1995 and 1997, approximately 7 and 5 years ago, respectively. Therefore, it is concluded that, while the deceptive testimony cannot be considered to be of ancient vintage, neither can it be considered to be of very recent origin.

31. Applicant's reputation for good character in the community. The only direct evidence of record relating to **Mr.** Schoenbohm's reputation for good character in **the** community was the testimony of Frank A. Todd, IV, of Port Vue, Pennsylvania. Mr. Todd testified unequivocally that **Mr.** Schoenbohm's reputation **for** good character was favorable.

32. Mr. Schoenbohm's reputation for good character may also be inferred by his current employment record, by his conduct during Hurricane Lenny, and by his position as an elected and non-elected official of the Republican Party of the United States Virgin Islands. With respect to employment, **Mr.** Schoenbohm has held, and continues to hold, positions of responsibility and

trust in the Virgin Islands Department of Property and Procurement. Moreover, when Hurricane Lenny hit the Virgin Islands, Mr. Schoenbohm returned station WSTX(AM) to the air. It was vital to put that station back on the air because it was the primary AM station that people listened to during emergencies. **Mr.** Schoenbohm was commended for “giv[ing] unselfishly of [his] time to ensure that the needs of the government and [his] community were fulfilled.”

33. In view of the above, it must be concluded that **Mr.** Schoenbohm’s reputation for good character in his community is excellent.

34. Meaningful measures taken to prevent the future occurrence of misconduct. The denial of Mr. Schoenbohm’s renewal applications occurred because he testified deceptively before this agency. The deceptive testimony originally stemmed from his felony conviction. Consequently, meaningful measures to prevent future misconduct should reasonably include a commitment by Mr. Schoenbohm to avoid criminal behavior and to be truthful in all his dealings with this agency.

35. The findings establish, and it is concluded, that **Mr.** Schoenbohm has made such a commitment. **As** noted earlier, Mr. Schoenbohm has not been convicted of anything since 1992, and there is nothing in the record to suggest that he will commit crimes in the future. With respect to truthfulness, Mr. Schoenbohm candidly admitted that, at the time of the 1995 and 1997 hearings, he was in a state of denial, believing that he had been wrongfully convicted of a crime that he did not commit. **He** has now come to terms with his conviction, and recognizes that he is a felon. Mr. Schoenbohm has also acknowledged in no uncertain terms that he made “egregious . . . fatal mistakes” in his 1995 and 1997 hearing testimony, and he realizes that the Commission views misrepresentation as a “cardinal sin.”

36. Deterrent impact of the previous denial. The evidence establishes that Mr. Schoenbohm has been greatly shamed and humiliated as a result of the loss of his licenses, and he felt that he let his community down. In this regard, **Mr.** Schoenbohm testified

If you have been off the air for a year in ham radio you have shamed yourself . . . It is a very serious punishment when you are . . . a very high-profiled [sic] individual, involved a lot in contests and international operations, regarded as a person who has won contests and achieved world records, all of a sudden he is banished.. . .

And it is very hard for me to explain that to you because only **I** know it. You saw Frank Todd come here. I let him down. **I** let the community down and the Virgin Islands down where **I** cannot **perform** the services they have relied on in the past because I can’t even talk to the National Weather Service when a hurricane passes over, which I have done for years. And **I** have to explain to them every time **I** don’t have a license anymore [sic].

37. In light of Mr. Schoenbohm’s prominence and notoriety in the amateur radio community, as well as the positions of responsibility and trust he occupies in the Virgin Islands Department of Property and Procurement, it must be concluded that the loss of his licenses, and the shame and humiliation that resulted, have had the desired deterrent effect. **As Mr.** Schoenbohm stated, “the fact that **I** lost the license[s] . . . is a significant deterrent from screwing up **ever** again in **the** future.”

IV. ULTIMATE CONCLUSION

38. In sum, it has been concluded that **Mr.** Schoenbohm has not engaged in any significant wrongdoing since his prior disqualifying misconduct; that **Mr.** Schoenbohm's prior misconduct was not of very recent origin; that **Mr.** Schoenbohm's reputation for good character in his community is excellent; that Mr. Schoenbohm has taken meaningful measures to prevent the future occurrence of misconduct; and that the loss of Mr. Schoenbohm's licenses, coupled with the shame and humiliation that resulted, provide a sound basis for concluding that a recurrence of misconduct is unlikely. Consequently, it is ultimately concluded that Mr. Schoenbohm possesses the requisite character qualifications to be a Commission licensee (Issue 1), and that the captioned applications should be granted (Issue 2).

V. ORDERING CLAUSE

Accordingly, **IT IS ORDERED** that the Application of Herbert L. Schoenbohm for a Station License in the Amateur Radio Service, and the Application of Herbert L. Schoenbohm for a General Class Operator License in the Amateur Radio Service, File. No. 0000418274, ARE GRANTED.⁵

FEDERAL COMMUNICATIONS COMMISSION

Arthur I. Steinberg
Administrative Law Judge

⁵ In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d) of the Rules.